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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,048	07/13/2001	Walter L. Peck	peck	2678

26496 7590 12/07/2005

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EXAMINER

HAYES, BRET C

ART UNIT PAPER NUMBER

3644

DATE MAILED: 12/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claims 1 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 1 recites the limitation “an indentation on said at least two vertical supports” at line 4, which is ambiguous at best, as it is not clear how there can be a single indentation on at least two separate supports given the current level of understanding in physics. Examiner suggests adding --each of-- between “on” and “said” or some such phrasing. Further, similar is true for the recitation “a ridge” at line 10, with similarly suggested correction. For purposes of examination, this is how the claim will be further treated on the merits – there is one each.

4. Claim 12 recites the limitation “said bend has sufficient width to accommodate a foot” at line 1. First, the recitation that an element is “sufficient” to perform a given function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In this case, if a potential user is able to have a foot accommodated on the width of the bend, the prior art anticipates or obviates the claimed invention. Second, this ‘limitation’ is incomprehensible as the size and shape of the feet of potential ‘users’ are as multitudinous as there are potential user’s – the Earth’s population currently being an estimated 6.5 billion people – and as varied the feet of those roughly 6.5 billion people. And, that’s presuming that ONLY human users are intended, which is not so stated.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hillestad in view of US Patent No. 3,397,485 to Peterson.

7. Re – claim 1, Hillestad discloses the invention substantially as claimed including a plant stand 10 comprising: at least two vertical supports 11 – 13; an indentation 11a – 13a on each of the supports 11 - 13; a bend – the crest above 11a – 13a – at a lowermost end of the support 11 – 13; at least one ring 15 attached to the supports 11 – 13; and a ridge 15a – c on the ring 15, the ridge 15a – c protruding from the ring 15 and in communication with the indentation 11a – 13a; and, wherein the at least two vertical supports 11 – 13 are arranged to slide along the at least one ring 15 while remaining attached to said at least one ring, so that the at least two vertical supports 11 – 13 are can touch one another*. However, Hillestad does not disclose the bend being below the indentation.

8. *Regarding the functional recitation beginning “wherein” and ending “another”, it has been held that the functional “whereby” (“wherein”) statement does not define any structure and accordingly cannot serve to distinguish – see *In re Mason*, 114 USPQ 127, 44 CCPA 937 (1957). In this case, the supports are capable of sliding along the ring while remaining at least as attached as they are in Fig. 1, for example, thus, allowing the at least two supports touching capability.

Art Unit: 3644

9. Peterson teaches a bend 13 – 16 at a lowermost end of a plant stake in the same field of endeavor for the purpose of inserting the stake into an earthen surface, best seen in FIG. 2, shown in phantom. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hillestad to include the bend as taught by Peterson in order to insert the stand into earth.
10. Re – claim 12, Hillestad in view of Peterson discloses the claimed invention as applied to claim 1 above, including the bend having sufficient width to accommodate a foot as claimed – see rejection under 112, 2nd paragraph above, for example.

Response to Arguments

11. Applicant's arguments filed 08 AUG 05 have been fully considered but they are not persuasive. See above regarding how the amended claim is rejected.

Conclusion

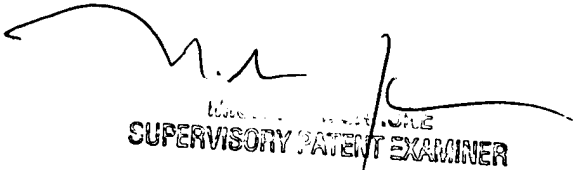
Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (571) 272 – 6902. The examiner can normally be reached Monday through Friday from 5:30 am to 2:00 pm, Eastern Standard Time.

The Central FAX Number is **571-273-8300**.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (571) 272 – 7045.

bh

2-Dec-05


SUPERVISORY PATENT EXAMINER